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10/043,168	01/14/2002	Antonio Lopez Cabrera	Q-67978	5032

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 08/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

10

Application No.

04368

Applicant(s)

CABRERA, Ad

Examiner

Neil Levy

Group Art Unit

16/6

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 4/23/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-12, 14, 15 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-7, 9-12, 14, 15 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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Art Unit: 1616

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Examiner finds no description demonstrating or explaining what is meant by "enhances" there are no evident quantitative before and after data, for instance, prevention, has not been shown.

Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is no basis for weight %-please so indicate-based on the weight of the (% do not add up to 100) total composition? , or on the weight of the water? Or ?

Thankyou.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 14 are rejected under 35 U.S.C. 102(a) as being anticipated by
Rosen et al 6156299.

The instant composition is disclosed-col.2 lines 42-46 teaches 11% acetyl salicylic acid acts as an antimicrobial-thus bactericidal, yeast control agent-by acne and seborrhea treatment. Rosen uses 5% up to saturation with added yeast control and antibacterial agents-propylene glycol, glycerin, isopropanol, with water carrier (col.3, line 49-col.4 line 67). The (col.3 lines 39-43 and col.4, lines 40-67)

thing, cleaning, anti pruriginous, anti-irritant effects, of the instant components are evident as the instant agents of these effects are combined in Rosen's composition, citrus fragrance, would function as deodorizer (col.5, lines 25-27). The composition is not limited by its usefulness as Rosen presents it; no patentable weight is given to how the composition is intended to be used.

Claims 1-4, 14 are rejected under 35 U.S.C. 102(e) as being anticipated by
Rosen et al 6503488.

See col.3, line 53-line 38, col.4, for function as the instant antiyeast (antimicrobial, antifungal) deodorant anti instant, anti-pruriginous, antiseptic, cicatrizar, keratolytic (exfoliant) and cerumenil^otic agents and functionalities.

Claims 1-5, 7, 9, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Martindale '72).

Salicylic acid, the instant bactericide, yeast control, keratolytic (p.257-uses) and lactic acid, the instant ceramolytic, antiirritant, anti pruriginous agents (p.257-collidons) is shown as a pharmaceutical preparation, not excluding veterinary use. Enhancement (instant claim 2) is seen as the collidon addition.

See also Emplaetrum, p.258-salicylic acid, oleic acid salt, vegetable extract; camphor, soap (lactic acid, oleic acids) and beeswax-all the anti-components and cleaning, yeast control (soap) being met.

Other preparations include deodorant agents: talc dusting powder p.257/and (aqueous-cream, p.257) lavender oil. Use as single dose compositions are emulsified, inclusive of methods of eardrop (p.257).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7,9,12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKenzie et al-5747021 in view of Martindale '72.

Mckenzie provides the instant compositions (col.2, lines 40-59) of propylene glycol, PEG (carhomer) Ethoxydiylglycol (polymer of ethylene-1, neiomzed water, glycerine, no lactic or salicylic acid, rather, aspirin, was used. The composition can include fragrances; camomilla extract (col.3, lines 23-24) thus, the instant plant extracts.

Particular ratios of ingredients are adjustable as desired, to achieve optimal viscosity, antiirritant and other effects (col.3, line 55-line 35, col.6).

Although the instant compositions require salicylic acid, Mckenzee meets all other requirements. Martindale, however shows, with salicylic acid, as opposed to aspirin, toxicity is less (p. 258, 2nd column-salicylosalicylic acid). Iceland Moss, as a bittering agent, would be obvious to add (p.1083, Martindale) to guard against accidental child ingestion.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a cosmetic composition, to use one of Mckenzie et al., modified with Martinoale to provide acceptable application in a variety of conditions, teaches one having ordinary skill in the art would be motivated to perform this modification in order to provide effective control of bacteria, toxicity, aralgesia.

There is no unusual and/or unexpected results obtained since the prior art is well aware of the use of specific binders, carriers, toxicants and other adjuvants common to the skin treatment arts.

The selection of each ingredient and amounts thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired, for instance, ingredients used for their known use for means of administration, compatibility with acceptable carrier, actives, and pharmaceutically/cosmetically, dermally acceptable carriers, for conditioning, fragrance, color, deodorizing, pH control; for reduction of side effects, aesthetics, improved looks, touch, feel, texture, preservative, antioxidant and delivery form; lotions,

creams, are all used in the cited prior art for the functionality for which they are known to be used, and the use of ingredient for the functionality for which they are known to be used is not a basis for patentability.

Applicant has not provided any objective evidence of criticality, nonobvious or unexpected results that the administration of the particular ingredients' or concentrations provides any greater or different level of prior art expectation as claimed.

The instant invention provides well known old art recognized compounds, with well known art recognized effects, applied by well known art recognized methods to achieve control over microbes, as is well known in the art of cosmetic compositions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd
July 30, 2003



NEIL S. LEVY
PRIMARY EXAMINER